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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3750 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ZEMARBHAI MAFATBHAI RABARI

Versus

ASSISTANT PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 3750 of 2004

MR DIPAK R DAVE for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 23/06/2004

ORAL JUDGEMENT

Rule. Learned advocate Shri P.J.Mehta waives service of notice of rule. Being a short matter, learned advocates for the parties request this Court to take up

the matter for final hearing immediately.

2. In the present petition, the petitioner has challenged the order dated 20th September, 2001 passed by the respondent in exercise of powers under section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ("the said Act" for short) as well as the order dated 18th December 2003 passed under section 7-B of the said Act upon a review application filed by the petitioner. It is the case of the petitioner that he is not liable to make any payment towards provident fund and the impugned orders are required to be set aside. He however, confines his submissions to the fact that the order Annexure C dated 20th September 2001 was passed without participation from the petitioner since the partnership was dissolved and that he was deprived of reasonable opportunity to put forth his case. He further points out that the review application filed by him came to be rejected by the respondent solely on the ground of delay and thus material in possession of the petitioner has not been considered by the respondent authority. He prays for being given an opportunity to present his case before the respondent and requests for remanding the matter for fresh hearing. Learned advocate Mr.P.J.Mehta submits that the initial notice was served to the petitioner and that therefore, the order Annexure C is not an ex-parte order.

3. Having considered the rival submissions made before me, I am of the view that in the facts of the case and in the interest of justice, it would be just and proper to remand the matter to the respondent authority for fresh consideration and order in accordance with law after giving an opportunity to represent his case. For the said purpose, I quash and set aside the orders Annexures "C" and "I" and remand the matter to the respondent authority. I direct that the petitioner shall cooperate with the proceedings to be undertaken by the respondent afresh. Since much time has passed after passing of the order Annexure C and the petitioner himself was partially responsible for not cooperating with the proceedings earlier, I provide that the petitioner will deposit 25 per cent of the dues as per order Annexure C which will of course be without prejudice to the rights and contentions of the petitioner and subject to final outcome of the proceedings.

4. In view of the above directions, the petition stands disposed of with a further direction to pay cost of Rs.10,000/- (Rupees ten thousand) to the respondent. Rule is made absolute accordingly.

(Akil Kureshi, J.)

(vjn)